

Appl. No. 10/735,207  
Amdt. dated December 3, 2007  
Reply to Office letter of October 31, 2007

### **REMARKS**

Please reconsider the application in view of the above amendments and the following remarks. Applicants thank the Examiner for carefully considering this application.

#### **Disposition of Claims**

Claims 8-16 and 24-30 are currently pending in this application. A preliminary amendment received on December 12, 2006 acknowledged that claims 1-7, 17-23 and 31-37 as being canceled. In this response, Applicant has also canceled claims 13, 14, 25, 27, and 28. In response to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on October 31, 2007, Applicant has listed the canceled claims 31 through 37, which were from the original application.

#### **Claim Rejections**

Claim 8 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant has amended claim 8 to include limitations of claims 9, 13 and 14. Applicant submits that the claim 8 as amended is statutory subject matter.

Claims 8-13 and 24-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Papalia et al. (U.S. patent 6,255,805). Applicant has amended Applicant has amended claim 8 to include limitations of claims 9, 13 and 14. Applicant has amended claim 24 to include the limitations of claims 25, 27 and 28. Applicant submits that Papalia does not anticipate the independent claims 8 and 24.

Claims 14-16 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neirlich (U.S. patent 6,519,509). Applicant respectfully traverse the examiner's assertion.

Neirlich describes a system that monitors and controls energy distribution manage energy distribution or use for Energy Service Providers and end-users. A system includes a publicly or privately accessible distributed network, a network access device, and a management device. The network access device communicates with the management device through the distributed network to control loads at a remote location. The method

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of monitoring and controlling energy distribution receives data at an on-line Site, processes an application program that evaluates load and market supply data, and initiates power curtailment requests or power curtailment events.

However, contrary to the examiner's assertions, Neirlich does not provide for selecting an energy alternative that provides optimal energy usage, said selection being based on said established end-user energy policies, nor does Neirlich describe the selling any excess generated energy to other end-users or to energy suppliers by placing information about available energy in a location accessible to potential energy purchasers.

To establish a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings (MPEP 706.02(j)). There is no suggestion or teaching to modify Papalia by Neirlich to produce Applicant's invention. If there is no teaching, there is no prima facie case for obviousness.

In view of the above, Applicant respectfully submits that none of the art of record (alone or in combination) teaches, discloses or even suggests the invention as recited in each of Applicant's claims. Applicant further submits that all of the pending claims are in condition for allowance. Withdrawal of the rejections and passage to issuance is respectfully requested. Applicant believes this reply to be fully responsive to all outstanding issues and place this application in condition for allowance. If this belief is incorrect, or other issues arise, do not hesitate to contact the undersigned at the below listed telephone number.

Respectfully Submitted,

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